

It is true that Riggs’ pending § 2255 motion is second numerically, but a numerically second § 2255 motion is not always “second or successive” under 28 U.S.C. § 2255(h). For example, the Court of Appeals for the Fourth Circuit has held that an additional collateral attack is not “second or successive” when the factual basis for the additional collateral attack does not arise until after a prior

collateral attack was adjudicated. *See, e.g., United States v. Hairston*, 754 F.3d 258, 262 (4th Cir. 2014); *In re Taylor*, 171 F.3d 185, 187-88 (4th Cir. 1999).

Riggs alleges that a “new fact” establishes the illegality of his sentence and that the “new fact” had been undiscoverable until January 15, 2016, which was nearly two months after I adjudicated his first § 2255 motion. Thus, Riggs’ allegations implicate the holding of *Hairston*, which the United States has not yet addressed. Accordingly, the United States’ Motion to Dismiss is DENIED, and the United States shall FILE another response within thirty days.

It is so **ORDERED**.

ENTER: May 18, 2018

/s/ James P. Jones
United States District Judge